IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.02.2007

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.P.No.34938 of 2006

Axles India Workers' Union
(Regd.No.CPT/952)
Rep.by its Secretary,
3, Kambar Street,
Gandhi Nagar,
Sriperumbudur,
Thiruvallur District. ... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep.by its Secretary to Government,
Labour & Employment Department,
Fort St.George, Chennai 600 009.

2. The Commissioner of Labour,
Labour Welfare Building,
D.M.S.Compound, Chennai 600 006.

3. The Joint Commissioner of Labour,
Labour Welfare Building,
D.M.S.Compound, Chennai 600 006.

4. The Management of Axles India Ltd.
Singaperuperumal Koil Road,
Sriperumbudur 602 105.

5. Tamil Nadu National Engineering Employees Union,
(I.N.T.U.C.), I.N.T.U.C.Bhavan,
Rep.by its General Secretary,
No.270, M.T.H.Road, Sidco Estate,
Ambattur, Chennai 600 098. ... Respondents

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PRAYER: This writ petition is filed under Article 226 of the Constitution of India to issue a writ of declaration declaring the impugned settlement dated 17.05.06 arrived at under Section 12(3) of the Industrial Disputes Act, 1947 before the 3rd respondent between respondents 4 and 5 is binding only on the members of the 5th respondent Union and not the members of the petitioner union.

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For Petitioner : Ms.R.Vaigai
for Mr. K.M.Ramesh
For Respondents R1 to R3 : Mr.D.Srinivasan G.A.
Mr.A.L.Somajee, S.C.
for Mr.N.Balasubramanian
for R4
Sairaj Associates for R5

O R D E R

The writ petition is filed for a declaration that the settlement entered under Section 12(3) of the Industrial Disputes Act, dated 17.05.2006 before the third respondent between 4th and 5th respondents, is binding only on the members of the 5th respondent union and not on the petitioner union.

2. According to the petitioner union, the petitioner union is representing the workmen employment in the 4th respondent management in factory at Sreeperumpudur with membership of 61 workmen and 18 workmen in Gumidipundi out of the total number of workmen numbering 170. The 4th respondent management has transferred 23 workers on 12.09.2001 working in Sreeperumpudur factory to Gumidipundi factory, at the time, when the 4th respondent was not having factory at Gumidipundi at all and the transfer was only for victimization. When the 4th respondent management has withdrawn "on duty permission" granted to workmen, which was protested, they have announced a scheme for voluntary retirement, those who were not opting for voluntary retirement scheme were transferred to far of places like TATA Nagar, Jamshedpur and other places. There was also alteration of service condition which was protested and the 4th respondent management has issued memo to 16 workmen in respect of the said alteration of service condition in fixing the norms to its new products called R.A.109.

3. The 4th respondent management issued show-cause notice to 16 workmen for not giving production and imposed lockout in respect of them and the matter was referred to the Industrial Tribunal, Chennai, which has passed award in favour of workmen. However, the 4th respondent has challenged the same and it is pending before this Court. The 5th respondent union was started in the year 2003 at the instance of the 4th respondent in which 14 permanent workers were members. However, the 4th respondent has neglected the petitioner union, which is a majority and recognized union and entered 18(1) settlement on 03.09.2003 with the 5th respondent, for increasing production by nearly double the existing production. The said settlement, which was entered with the members of the 5th respondent union, which is binding upon the 15 permanent workers, has been insisted by the 4th respondent management, to be followed in respect of the petitioner union also.

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4. The petitioner union has raised a dispute about the transfer of 23 workmen from Sreeperumpudur to Gumidipundi. The Government has referred the dispute only regarding transfer and not relating to unfair labour practice, committed by the 4th respondent and therefore, the petitioner union has filed the Writ petition, which is pending. The petitioner union entered a settlement on 01.09.1999 with 4th respondent, which was to be in force for 3 years period. It was in those circumstances, no fresh demands were made due to the conduct of the management. After the agreement with the 5th respondent dated 03.09.2003 with the minority members, the 4th respondent has entered another agreement under Section 18(1) with the 5th respondent union on 04.02.2004 and 02.01.2004 in line with the earlier settlement dated 03.09.2003. The 4th respondent has also regularized the service of some of the apprentice in order to strengthen the 5th respondent union, by which the membership of the 5th respondent has increased.

5. According to the petitioner union, since the settlement didn't materialise at the instance of the 4th respondent, the 5th respondent has raised the Industrial Dispute before the 3rd respondent, about which the petitioner union was not aware and the third respondent has also not given notice regarding the conciliation. After several round of discussion on the said dispute, the third respondent has issued a notice to the petitioner union on 03.02.2006 as a formality fixing the date as 09.02.2006 at 11.30 a.m. That day was declared as holiday and no meeting was held. There was another notice dated 10.02.2006 fixing the date of meeting at 16.02.2006 at 4.00 p.m. On that day, the third respondent has assured that he would supply the copies of Industrial Disputes raised by the 5th respondent union and the matter was adjourned to 15.03.2006 and there was no meeting on the said date and the petitioner were informed that subsequent notice will be issued. It was thereafter another notice dated 19.04.2006 was received, fixing the meeting on 27.07.2006 at 4.00 p.m. When the petitioner has again requested the third respondent to supply the papers especially relating to the disputes raised by the 5th respondent, the third respondent has adjourned, saying that notice for further meeting will be intimated. A notice dated 12.05.2006 was sent by the 3rd respondent, which was received by the petitioner on 12.05.2006 fixing the meeting on 17.05.2006 at 4.00 p.m. On that day a letter from the petitioner union was submitted to the 3rd respondent, requesting the 3rd respondent to furnish the copies of the disputes raised by the 5th respondent and the comments made by the 4th respondent on dispute. The 3rd respondent has received the papers and asked the representative of the petitioner union to go. However, on 18.05.2006, the 4th respondent management has displayed in the notice board at Sreeperumpudur factory, a copy of the settlement said to have been signed on 17.05.2006 in the presence of the 3rd respondent between the 4th and 5th respondent. It was thereafter the petitioner union sent a detailed representation on 22.05.2006 to the third respondent stating that the said settlement is

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illegal and arbitrary. As per the alleged settlement dated 17.05.2006 stated to have entered under section 12(3) of the Industrial Disputes Act, the 4th respondent has given a legal sanctity to the earlier settlement entered under Section 18(1) between the 4th and 5th respondents, in order to bind the entire work force of Sreeperumpudur and Gumidipundi of the 4th respondent management.

6. Thereafter, the third respondent has furnished a copy of the said settlement dated 17.05.2006, which has revealed that the 5th respondent has made a charter of demand on 24.03.2005. However, in respect of arriving at such settlement under Section 12(3) of the Industrial Disputes, there was no discussion with the petitioner union and the 3rd respondent has deliberately avoided the petitioner union. Therefore, the said 12(3) settlement is challenged on the ground that it is illegal, unfair, arbitrary and unjustified. It is also challenged on the ground that the 3rd respondent has exceeded its jurisdiction and the 3rd respondent has abdicated his powers and jurisdiction and committed grave illegality, apart from the contentions that the settlement has not been arrived at after proper discussion and the same was entered hastily and with oblique motive.

7. According to the petitioner, the 4th respondent management influenced the third respondent to convert 18(1) settlement in to that of 12(3) settlement so as to improperly make binding effect on all the workmen of the 4th respondent management. It is also the case of the petitioner union that the benefit of increased dearness allowance provided by the impugned settlement has not been extended to the members of the petitioner union. On the other hand, for not giving production as stipulated under the impugned settlement, the members of the petitioner union are facing wage-cut to the extent of Rs.1800 to 3500 per month. In view of the same the present Writ petition is filed.

8. The 4th and 5th respondents have filed the counter affidavit. The respondents would state that the writ petition is not maintainable, in view of the availability of alternative remedy under the Industrial Disputes Act. It is also the case of the respondents that the matter requires factual issues and that cannot be decided in a Writ petition. In addition to that the 4th respondent has also contraverted the various averments made by the petitioner in the Writ petition.

9. While it is admitted that in the Sreeperumpudur factory of the 4th respondent, there are 159 permanent workmen and the petitioner union consist of the workers of the 4th respondent, it is the case of the 4th respondent that the 5th respondent union has 112 members while the petitioner union has only 59 members. Therefore, according to the 4th respondent the 5th respondent union is the majority and recognized union and the monthly union subscription deducted in respect of the 112 members by the 4th respondent from the wages. According to the 4th respondent, the

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petitioner union, has become minority and has lost its recognition. When the majority workers are working for 6 days a week in 3 shifts work pattern from March 2003, the petitioner union has refused for changing from 5 days a week in 2 shifts per day pattern to 6 days a week 3 shifts per day pattern. The working hours per week remains as 45 hours per week in both 5 days per week 3 shifts per day pattern and 6 days a week 3 shifts per day pattern. Majority of the members of the 5th respondent union were working on 6 days a week 3 shifts per day pattern and therefore, the system was introduced from November 2003, after prescribed form served under Section 9(A) of the Industrial Disputes Act, to the petitioner union and to the Government. Instead of complying with the request the petitioner union has approached this Court and filed W.P.No.22446 of 2004, which was dismissed, against which the Writ Appeal in W.A.No.3780 of 2004 was filed, which was also dismissed.

10. According to the 4th respondent, the petitioner union is indulging in go-slow production tactics. The factory production is line flow with 34 machines in a sequence operation and even if one machine fails to give the standard output, the entire flow line operation will be adversely affected and therefore, according to the 4th respondent it is relevant that the production is maintained in all 34 machines / operation uniformly for the purpose of maintaining optimum production. It was due to the slowing down attitude of the members of the petitioner union 49 percent of output is adversely affected resulting in financial loss to the 4th respondent. Due to the pressure from the customers, the 4th respondent had to maintain high quality of its products and timely deliver since it is a buyer market. By working 2 shifts per day for 5 days pattern a week, Sreeperumpudur factory had incurred a very huge loss amounting to 469 lakhs in 1997-1998, 373 lakhs in 1998-1999, 170 lakhs in 2000-2001, 224 lakhs in 2001-2002, 309.29 lakhs in 2002-2003 at the same time the 4th respondent second factory at Cheyyar working 3 shifts of 7.5 hours per shift 6 days per week was able to keep cost at required level.

11. According to the 4th respondent, the 5th respondent union which is majority union, has submitted a charter of demand for revision of wages and allowances on 24.03.2005 and the said union has also raised Industrial Disputes to the Joint Commissioner of Labour, the third respondent. There has to a bilateral discussion in order to arrive at settlement. According to the 4th respondent, the 3rd respondent has issued notice not only to the 4th and 5th respondent but also to the petitioner union on several days and therefore, according to the 4th respondent, the petitioner union was also a party to the conciliation proceedings held before the 3rd respondent and the petitioner union has deliberately refused to discuss the matter with the 4th and 5th respondents and refused to sign the conciliation proceedings, even though the petitioner union has attended the conciliation proceedings meeting.

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12. According to the 4th respondent, even as per the papers filed by the petitioner union, the petitioner union has issued notice to the third respondent and the petitioner union had been served with a copy of charter of demand dated 24.03.2005 submitted by the 5th respondent. Even though the 5th respondent has taken the reasonable stand according to the 4th respondent, the petitioner union has not acceded to the same. According to the 4th respondent, in those circumstances the 12(3) settlement was entered which was fair and reasonable and is binding upon the petitioner union also. The settlement entered between the petitioner union and the 4th respondent dated 01.03.1999, which was to be in effect upto 28.02.2002, was terminated by the petitioner union itself on 29.01.2002 and thereafter the petitioner union has not given any charter of demands. Therefore, the settlement entered between the petitioner union and the 4th respondent dated 01.09.1999 is no longer pending, since the same has been replaced by the impugned 12(3) settlement dated 17.05.2006, entered in the presence of the 3rd respondent. According to the 4th respondent, the third respondent has followed the provisions of the Industrial Disputes Act.

13. In respect of settlement entered between the employer and the workmen during the course of pendency of dispute, the procedures are contemplated by which the conciliation officer has sent the report to the appropriate Government and the same is binding not only to the parties to the settlement but also to all other employees working in the establishment unlike in cases of settlement entered under Section 18(1) of the Industrial Disputes Act, wherein the binding effect is only between the parties. According to the 4th respondent such settlement entered under Section 12(3) of the Industrial Disputes Act, by the employer with recognized majority union is binding upon even the members of the minority union, as it is laid down by the judicial precedent. According to the 4th respondent, the impugned settlement dated 17.05.2006 is for a period from 01.09.2005 to 31.08.2009 applicable to all workmen of the 4th respondent union and as per the settlement the wage increase had also been accepted on the condition of the required production by way of output by individual workmen.

14. It is also the case of the 4th respondent that the factory is still running at Gumidipundi SIPCOT Industrial Estate and the 4th respondent is entitled to transfer workmen to any place as per certified standing orders and appointment issued to the said workmen. As stated above the writ petition filed in respect of transfer and that was dismissed by the learned single judge and also by the Division Bench. The voluntary retirement scheme announced by the 4th respondent in January 1999 was to tide over the financial crisis. It is also the case of the 4th respondent that the impugned settlement dated 17.05.2006 is not conversion of the earlier settlement entered under Section 18(1). It is not true that the petitioner union was kept out of discussion by the 3rd respondent. It is also the case of the 4th respondent that the 4th respondent is not

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implementing the impugned settlement dated 17.05.2006 as against the workers of the petitioner union and on the other hand from 2004 onwards the 4th respondent is paying wages to the members of the petitioner union only based on the work done by the workers of the petitioner union on the same principle which is made applicable to the other workers belonging to the 5th respondent. If the workers fail to produce the norms prescribed by the management they will not qualify for full wages and they will be paid only pro-rata wages. Therefore, according to the 4th respondent it is not correct to state that under the impugned settlement dated 17.05.2006, deductions are made in wages.

15. Therefore, according to the 4th respondent, the wages of the workers individual workmen vary from month to month depending upon the production output. The settlement has been accepted by the majority of workers and has been implemented from 17.05.2006 and the members of the 5th respondent union are receiving the settlement benefits, however, the petitioner union is resorting to deliberate go-slow production. In the Annexure filed along with the counter affidavit, the 4th respondent has also stated about the particulars stating that in the settlement entered on 01.09.1999 between the 4th respondent and the petitioner union also it provided for minimum production norms to be achieved to earn wages and there has been change of dearness allowance and it is almost similar agreement which has been entered on 17.05.2006 under Section 12(3) of the Industrial Disputes Act, and therefore, there is no change.

16. The 5th respondent has also filed the counter affidavit in the same terms. The 5th respondent also would submit that the settlement was based on the productivity linked payment. According to the 5th respondent it is majority union with 112 members and the petitioner union is a minority union with 59 members. It is further stated that the petitioner union along with the 4th respondent has signed the settlement on 01.09.1999 under Section 18(1) of the Industrial Disputes Act, which also covers the wage revision and minimum production norms to be given by workmen with retrospective effect on 01.03.1999. After the said settlement was terminated on 29.01.2002 by the petitioner union itself, the petitioner union has not made any charter of demands.

17. According to the 5th respondent the impugned settlement itself is in the line of earlier settlement entered between the petitioner union and the 4th respondent, which was based on the minimum production norms. According to the 5th respondent the members of the 5th respondent union are fulfilling the production norms and standard fixed in the impugned settlement and monetary benefits received by them under the impugned settlement are much more than what they have earned from 01.09.1999 settlement and therefore, it is beneficial to the workmen.

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18. Ms.Vaigai, learned counsel appearing for the petitioner union would submit that the impugned settlement entered between the 4th and 5th respondents cannot be termed as having been entered during conciliation proceedings. There was no conciliation proceeding pending. Therefore, the impugned settlement is not binding on the persons who are not parties. According to her, till 2002 all settlements were entered between the petitioner union and the 4th respondent employer, however, it was on 03.09.2003 for the first time a settlement was entered under Section 18(1) of the Industrial Disputes Act between the 4th and 5th respondents for the period upto 31.08.2006. According to her, when the said settlement was in existence upto 31.08.2006 between 4th and 5th respondents, the 5th respondent could not have raised any charter of demand before 31.08.2006. She would submit that the said settlement entered under Section 18(1) between the 4th and 5th respondents clearly states that the said settlement will be in effect upto 31.08.2006. She would also refer to one of the clauses in the said settlement, wherein it is specifically agreed that the union and the workmen agreed not to raise any demand during the period of settlement.

19. Therefore, according to her, when such settlement between the 4th and 5th respondents were in existence, the 5th respondents would not have raised any Industrial Disputes at all as it is falsely stated by the 4th respondent. According to her the conciliation proceeding, which was conducted by the 3rd respondent was not in accordance with law. She would also submit that the communication of the 3rd respondent dated 03.02.2006 states that it is a final settlement report. However, a reference to the said letter of the third respondent shows that even though it is stated as a final settlement report, it only calls for the parties to appear on 09.02.2006 at 11.30 a.m.

20. According to her the petitioner union has in fact complained to the labour commissioner on 10.03.2006 about the attitude of the 3rd respondent. She would also state that by communication dated 10.04.2006 the petitioner has informed the 3rd respondent that they were not supplied with any copies and requested third respondent not to proceed with any settlement. She would state that in the notice given by the 3rd respondent dated 05.05.2006 fixing the meeting on 10.05.2006, notice has been sent only to the petitioner union.

21. She would also submit that on 12.05.2006 there was another notice sent to the petitioner union as well as the 5th respondent calling upon the meeting on 17.05.2006 and on the same day the 12(3) settlement is stated to have been arrived at to which the petitioner union is not a party. It is also her contention that when the petitioner union was not even given the copies regarding the demands stated to have been raised by the 5th respondent, the 3rd respondent in the settlement stating as if the claim of the petitioner union has been considered is only unjustifiable and fictitious.

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22. According to her, the terms of the 12(3) settlement is almost the same as that of the 18(1) settlement entered between 4th and 5th respondent dated 03.09.2003 and therefore, the very idea of converting the contents of 18(1) settlement to that of 12(3) settlement is to see that all the employees who are not even parties to such settlement to be made liable for such terms. According to her, since the 3rd respondent himself has not filed any counter affidavit, mala fide attributed on the third respondent stands to be proved and therefore, the impugned settlement cannot be taken as a settlement under Section 12(3) of the Industrial Disputes Act.

23. The learned counsel for the petitioner would rely upon the Division Bench judgements of this Court reported in 1989(2) LLN 693 as also in 1992(2) LLJ 797 to substantiate her contention that when once section of workmen were excluded in a conciliation proceeding, it cannot be stated that the conciliation officer has discharged his function as mandatory under Section 12 of the Industrial Disputes Act. She would also rely upon the judgement of this Court rendered in 1983(1) LLJ 181 as confirmed by the Division Bench of this Court in 1984(1) LLJ 349, in respect of the legal effect of the settlement reached in the course of and outside conciliation proceedings under Section 12 and Section 18(3) of the Industrial Disputes Act. To substantiate her contention that during the operation of the previous settlement any subsequent settlement entered will become invalid, she would rely upon the judgement of the Hon'ble Supreme Court in 1977(2) LLJ 339. She would also rely upon another judgement of the Division Bench of this Court reported in 1989(1) LLJ 180 to support her case that no dispute can be validly raised by the parties wherein, there was already in existence a settlement and no reference could be made of any such dispute and according to her whether it is small number of workmen or larger number of workmen, the same is immaterial.

24. She would also rely upon the judgement of the Hon'ble Apex Court reported in 2000(1) SCC 371 to say that when there is any existence of settlement between the management and the recognized majority union, there is no question of any further settlement. According to her on the date when the impugned settlement stated to have been made between the 4th and 5th respondents on 17.05.2006, there has already been a settlement between the 4th and 5th respondents entered under Section 18(1) of the Industrial Disputes Act, which was on 03.09.2003 to be operative till 31.08.2006 with a specific clause in the agreement stating that during the period of such settlement no further demand will be made by the 5th respondent and therefore, according to the learned counsel for the petitioner the impugned settlement stated to have entered under Section 12(3) of the Industrial Disputes Act, is not valid in law.

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25. On the other hand, Mr.A.L.Somyajee learned Senior counsel appearing for the 4th respondent would submit that even though it is true that there was a settlement under Section 18(1) entered between the 4th and 5th respondents on 03.09.2003 to which the petitioner union was not a party, the 5th respondent has written to the 4th respondent that in spite of the target achieved regarding production as per the settlement dated 03.09.2003 the workers are not given incentives and therefore, the 5th respondent union has made a demand. It was based on the said demand, conciliation proceedings were initiated and on 03.02.2006 the 3rd respondent has issued notice. He would also submit that subsequently on 22.02.2006 and 06.03.2006 notice was given by the 3rd respondent to the petitioner union. He would also submit that the management by a letter dated 23.02.2005 addressed to the petitioner union has in fact informed that the petitioner union's production has come down and such letter was subsequently given on 11.03.2005 and 14.03.2005 and in spite of it, the petitioner union had not taken steps for increasing the production and it was in those circumstances, the 4th respondent management has to write to the 3rd respondent the Joint Commissioner of Labour on 17.02.2006 requesting him to deal with the matter.

26. According to the 4th respondent, the petitioner union has raised many disputes and in fact the petitioner union has filed I.D.No.8 of 2004 claiming bonus and increase of 20% for the account year 2001 - 2002. Further, the petitioner union has raised I.D.No.11 of 2005 challenging the introduction of 6 days a week and 3 shifts a day pattern, apart from filing I.D.No.22 of 2005 in respect of the same. The learned Senior Counsel would also submit that Approval Petition 8 of 2004 has been filed in respect of the discharge of one T.R.Varadan apart from certain complaints in I.D.No.34 and 49 of 2004. He would also refer to various disputes raised in respect of individual cases by the petitioner union in I.D.No.351 of 2002 apart from I.D.No.34 of 2005 where 18 workers were transferred and the Writ Petition filed in that regard. He would also refer that the petitioner union has filed I.D.No.4 of 2004 raised in respect of 6 workmen apart from C.P.No.364 of 2004 in respect of enforcement of an award and I.D.No.34 of 2004 when 12 workers were transferred from Axel Housing Division to New Drive Head Division in Sreeperumpudur factory in July 2001. Therefore, according to the learned Senior Counsel when the petitioner union has been raising various Industrial Disputes in accordance with the Industrial Disputes Act, there is absolutely no reason for the petitioner union to approach this Court under Article 226 of the Constitution of India challenging the validity of the 12(3) Settlement.

27. The learned Senior Counsel also would submit that a reference to the entire above said disputes would show that the petitioner union has never chosen to raise any dispute about the wage revision. He would also refer the various communications by the 4th respondent management addressed

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to the petitioner union stating about the go-slow attitude of the petitioner union with a request to give the required production, referring about the financial loss incurred by the 4th respondent management. He would also submit that after the settlement was entered between the petitioner union and the 4th respondent management on 01.09.1999 under 18 (1) of the Industrial Disputes Act, the new models have been introduced for the benefit of the customers, which required the production in a different manner and the production was required as per the norms prescribed by the Madras Productivity Council and after taking all steps in pursue the petitioner union to give the production level. Since the same has failed, the 12(3) settlement had to be entered between the 4th and 5th respondents and 5th respondent being the majority union and it is not correct to state as if the petitioner union was not aware of the 12(3) settlement.

28. The learned Senior counsel would rely upon the order of the Division Bench of this Court reported in 2006(3) LLJ 255 to substantiate his contention that in cases where disputed question of fact is required to be considered, the writ petition is not maintainable. He would also rely upon another order of this Court dated 29.09.2006 passed in W.P.No.14579 of 2006 in the similar circumstances questioning the validity of the settlement wherein this Court has dismissed the writ petition holding that the writ petition is not maintainable by referring to the various judgements of the Hon'ble Apex Court including the one reported in 2005(8) SCC 49. He would also refer to the judgements of the Hon'ble Apex Court reported 1976(4) SCC 736, AIR 1990 SC 1801, apart from the judgement of the Andrapradesh High Court reported in 1990(1) LLJ 259 to substantiate his contention that any settlement entered during the course of conciliation proceeding is valid and binding upon all the employees whether they are the members of the union or rival union and whether they are parties to the agreement or not.

29. In addition to the same he has also relied upon the judgement of the Hon'ble Supreme Court reported in 1986(2) SCC 151, apart from the judgement reported in 2002(3) SCC 411, to state that when a settlement is entered under Section 12(3) of the Industrial Disputes Act, the presumption shall be attached in favour of the said settlement. In respect of the maintainability of the writ petition, the learned Senior counsel places reliance upon the judgement of the Hon'ble Supreme Court reported in 2000(1) SCC 371 stating that when there is a dispute regarding the fact of the settlement, the same is referable under Section 10 of the Industrial Disputes Act. To substantiate his contention that when alternative remedy is available Article 226 cannot be resorted to, he would also rely upon the Division Bench judgement of this Court reported in 2005 Writ Law Reporter 310, apart from 2005 WLR 312, apart from few other judgements from various High Court including our High Court.

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30. The learned Senior Counsel would submit that when once the 5th respondent union is the majority union and a conciliation proceeding was conducted by the 3rd respondent after giving notice to the petitioner union also and in course of such proceedings a settlement was entered, the presumption is that the settlement is valid in law and if the petitioner union seeks to set aside the settlement, it requires the factual assertion of facts as to whether the conciliation proceedings was done in a proper manner, whether notice has been given to the petitioner union properly, whether the settlement was entered in the larger interest of the workmen and this facts requires evidence and that cannot be decided in a writ proceeding. He would also submit that it is not as if the petitioner has no remedy available and the petitioner union can always resort to the reference under Section 10 of the Industrial Disputes Act.

31. The learned counsel appearing for the 5th respondent in addition to the contention raised by the learned Senior counsel appearing for the 4th respondent would also submit that the 5th respondent has made a charter of demand and Conciliation Officer has conducted the proceedings as per law and it was based on the Production Incentives Payment Scheme the agreement was entered. He would also submit that the validity of every settlement has to be tested in the larger interest of the functioning of the industry and in the cases of allegation against the validity of such settlement, the same can only be settled by way of Industrial Disputes. Therefore, according to the learned counsel for the 5th respondent, there is no ground to interfere as to the validity of the settlement entered under Section 12(3) of the Industrial Disputes Act.

32. Ms.Vaigai, learned counsel appearing for the petitioner union by way of reply would submit that in cases where there is a violation of principles of natural justice, especially in the circumstances that the 5th respondent could not have made any demand since there is already a subsisting 18(1) settlement between the 4th and 5th respondents and therefore, it is on the face of it there is lack of jurisdiction and therefore, the writ petition is maintainable. According to her, the presumption about the validity of settlement arrived at 12(3) of the Industrial Disputes Act, will be possible only in the absence of 18(1) settlement between the 4th and 5th respondents and therefore, serious doubt about the very validity of such 12(3) settlement, especially in the circumstances and under 18(1) settlement the 5th respondent has specifically agreed that during the pendancy of the said settlement they would not raise any dispute or make a demand, while so it was practically and legally not possible for the 5th respondent to have raised a demand during the subsistence of such 18(1) settlement entered and there could not have been any 12(3) settlement entered and therefore according to her, the 12(3) settlement is extraneous in its character and invalid on the face of it. She would also submit that in cases where there are a violation of the principles of natural justice, the alternative remedy cannot be a bar.

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33. I have heard the learned counsel for the petitioner union as also the learned Senior counsel for the respondents apart from the learned Government Advocate, who has made his submission and perused the entire records.

34. It is not in dispute that there was earlier a settlement entered between the petitioner union and the 4th respondent management on 01.09.1999 under Section 18(1) of the Industrial Disputes Act, and at that time, the petitioner union was the only union. A reference to the said settlement entered on 01.09.1999, which cannot be disputed by the petitioner union shows that one of the basis for such settlement, was productivity increase as it is given in Annexure-C of the said settlement. A reference to the Annexure-C shows that the petitioner union has aggreed with the 4th respondent for a level of production per shift. Therefore, the incentive payable for productivity cannot be said to be unknown to the petitioner union in respect of their employment with the 4th respondent management.

35. It is also not in dispute as it is admitted by the petitioner union itself that after the 5th respondent union was formed after a division from the petitioner union, there was in fact a settlement entered between the 4th respondent management and the 5th respondent union on 03.09.2003 under Section 18(1) of the Industrial Disputes Act. It is also not in dispute that the term of the settlement shows that the said agreement was for a period of 3 years from 01.09.2003 to 31.08.2006. It also specifically states in Clause 8 that "the union and workmen agreeing not to raise any demand during the period of the settlement". It is also relevant to point out that the said settlement also speaks about the production and productivity improvements. Therefore, the concept of incentive based on productivity has continued, even when the 4th respondent has entered a settlement with the 5th respondent union under Section 18(1) of the Industrial Disputes Act.

36. It is true that the legal position is clear that as far as the 18(1) settlement is concerned, the same is binding between the parties to the agreement. The basic question that is raised by the petitioner union is that when a settlement under 18(1) of the Industrial Disputes Act, was in force that was for the period between 01.09.2003 to 31.08.2006 and in the settlement when the 5th respondent union has specifically admitted that during the pendancy of the said settlement no demand will be made, the demands stated to have been made by the 5th respondent on 10.06.2005 to the 4th respondent during the pendancy of the said 18(1) settlement can only be either invalid or any further settlement as it is seen in the impugned 12 (3) settlement is consequently void.

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37. A reference to the said demand made by the 5th respondent to the 4th respondent dated 10.06.2005 during the subsistence of the 18(1) settlement shows that as per the settlement dated 03.09.2003 incentives has been fixed, however more than the productivity mentioned in the Annexure, the same has increased and depending upon the said increase no incentives has been given and also there was a ceiling of scale resulting in the inability to get the increase of pay. It was on that basis the said demand was made. A reference to the Industrial Disputes Act, shows that when a settlement entered under Section 18(1) of the Industrial Disputes Act, by way of agreement between the employer and workmen otherwise than in course of conciliation proceedings, it is not only binding only upon the parties to the said agreement only and there is no bar for the parties to the agreement to cancel the same. In the absence of such bar, mere term in the settlement entered under Section 18(1) of the Industrial Disputes Act, in which a specified group of workmen have aggreed with employer not to raise any demand during the period of the said agreement does not take away the rights given to the workmen under the Industrial Disputes Act, to raise the dispute for conciliation to be construed the term of agreement under Section 18(1) of the Industrial Disputes Act or act as a permanent bar against the workmen during the period of the agreement and such bar will be against the very spirit of the Industrial Disputes Act, for, that will lead to the situation where the contractual obligation will supersede the statutory rights, which cannot be the intention of the labour legislation.

38. If the contention raised on behalf of the learned counsel for the petitioner union is taken on the ground that during the subsistence of 18(1) settlement, there was no possibility for the 5th respondent to make a fresh demand and such demand has been raised by the 5th respondent in collusion with the 4th respondent for the purpose of creating a binding obligation on all workmen by entering a settlement under 12(3) of the Industrial Disputes Act, through conciliation process, certainly it requires the appreciation of evidence and factual situation have to be ascertained, which cannot be done by issuance of the writ petition under Article 226 of the constitution of India. Therefore, it is clear that a settlement entered between the workmen and the employer under Section 12 (3) of the Industrial Disputes Act during the course of conciliation, cannot be held to be invalid merely on the ground that the said settlement have been entered at the time when 18(1) settlement was in operation between the employer and the group of workmen.

39. As far as the validity or otherwise of the settlement entered between the 4th and 5th respondents under Section 12(3) of the Industrial Disputes Act dated 17.05.2006 which is impugned in this writ petition, one of the main points raised on behalf of the petitioner union is as stated above the subsistence of the earlier settlement under Section 18(1) of the Industrial Disputes Act, apart from want of notice from the 3rd respondent

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about the conciliation. A reference to the file produced by the 3rd respondent regarding the conciliation proceeding shows that the 3rd respondent has issued notice to the petitioner union as well as the 4th and 5th respondent on 03.02.2006, 10.02.2006, 22.02.2006, 06.03.2006, 15.03.2006, 19.04.2006, 27.04.2006, 05.05.2006 and 12.05.2006. It is also seen in the file that by a letter dated 15.02.2006 the petitioner union has informed the 3rd respondent admitting that the 3rd respondent has delivered a letter of demand of Tamil Nadu National Engineering Employees Union namely the 5th respondent dated 10.06.2005.

40. It is also seen that as stated in the office note maintained by the 3rd respondent that on 16.02.2006 the representative of the petitioner union has participated, ofcourse has not signed in the proceedings. Therefore, prima facie on fact it cannot be said that the conciliation conducted by the 3rd respondent is not valid in the eye of law, even though it is open to the petitioner union to prove the same otherwise by leading evidence. In such circumstances, it is relevant to point out that the Hon'ble Supreme Court on more than one occasion has held in categoric terms that the said settlement entered during the course of conciliation proceedings carries a presumption that it is just and fair apart from making it binding on all workmen, who are not even parties to the same. Even though the learned Senior counsel appearing for the 4th respondent has sited many judgements of the Hon'ble Apex court to strengthen his argument that when prima facie the conciliation proceedings have been conducted and during the course of the same agreement entered either under Section 12(3) of the Industrial Disputes Act, or under Section 18(3) of the Industrial Disputes Act, the presumption should be in favour of the agreement and it is binding upon all the workmen, who are not even parties to the same, I do not propose to enter into the same, since I am of the considered view that by looking into the averments made by the petitioner union in the writ petition against the way in which the said settlement under Section 12(3) was stated to have been entered between the 4th and 5th respondents, I am obliged to consider the maintainability of the writ petition in the said context.

41. In the present case the writ petitioner union virtually attributes mala fide on the 3rd respondent, apart from collusion between the 4th and 5th respondents and therefore, according to the petitioner union the impugned 12(3) settlement is mala fide in nature. That apart, the issues are raised that notice has not been issued and fair opportunity has not been given, even though as I have stated above that the records shows the notice has been despatched, which certainly relates to the disputed question of facts as it is held by the Division Bench of this Court in the judgement Chairman and the Managing Director, M/s. Metal Box India Ltd., New Delhi and another Vs. Metal Box Company Workers Union, Chennai and others reported in 2006(3) LLJ 255 by the Division Bench as follows:

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"17. It is not possible for us to accept the submissions made by the learned counsel for the first respondent/Union that the mala fide nature of the impugned settlement, and the questions whether there was a closure or not and whether the first respondent was given a reasonable opportunity can be decided from the available materials and therefore, it is not necessary for the workmen to be driven to the Tribunal for establishing these issues. We have already seen that there are disputed questions of fact and therefore, we are inclined to accept the objection raised on behalf of the appellant that the writ petition itself is not maintainable and therefore, no interim order should have been granted."

42. While construing the validity of the settlement entered under Section 12(3) of the Industrial Disputes Act, and the scope of the jurisdiction of the High Court under Article 226 / 227 of the Constitution of India, the Hon'ble Supreme Court in ITC Ltd., Workers' Welfare Association and another Vs. Management of ITC Ltd., and another reported in 2002(3) SCC 411 has held that the High Court in exercising such jurisdiction should circumspect and be cautious in disturbing such settlement. The Hon'ble Supreme Court has held

"18. The next principle to be borne in mind is that in a case where the validity of the settlement is assailed, the limited scope of enquiry would be, whether the settlement arrived at in accordance with sub-sections(1) to (3) of Section 12, is on the whole just and fair and reached bona fide. An unjust, unfair or mala fide settlement militates against the spirit and basic postulate of the agreement reached as a result of conciliation and, therefore, such settlement will not be given effect to while deciding an industrial dispute. Of course, the issue has to be examined keeping in view the presumption that is attached to the settlement under Section 12(3).

Further it proceeds:

"23. What follows from a conspectus of these decisions is that a settlement which is a product of collective bargaining is entitled to due weight and consideration, more so when a settlement is arrived at in the course of the conciliation proceedings. The settlement can only be ignored in exceptional circumstances viz. If it is demonstrably unjust, unfair or the result of mala fides such as corrupt motives on the part of those who were instrumental in effecting the settlement. That apart the settlement has to be judged as a whole, taking an overall view. The various terms and clauses of settlement cannot be examined in piecemeal and in vacuum."

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43. Applying the said yardstick I an obliged to come to a conclusion that on the basis of the affidavit filed in the writ petition this Court cannot come to a conclusion that the impugned 12(3) settlement is not valid in the eye of law. That can only be decided after the factual assertions are made, which is possible only on considering the evidence, as pointed out by the Hon'ble Supreme Court in the National Engineering Industries Ltd., Vs. State of Rajasthan and others reported in 2000(1) SCC 371. The wordings of the Hon'ble Apex Court are as follows:

> "24. It will be thus seen that the High Court has jurisdiction to entertain a writ petition when there is an allegation that there is no industrial dispute and none apprehended which could be the subject matter of reference for adjudication to the Industrial Tribunal under Section 10 of the Act. Here it is a question of jurisdiction of the Industrial Tribunal, which could be examined by the High Court in its writ jurisdiction. It is the existence of the Industrial Tribunal (Sic Dispute) which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended the appropriate Government lacks power to make any reference. A settlement of dispute between the parties themselves is to be preferred, where it could be arrived at, to industrial adjudication, as the settlement is likely to lead to more lasting peace than an award. Settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements it could be the subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the held of the Conciliation Officer must be fair and reasonable."

44. In all most a similar circumstance of course relating to the declaration of the voluntary retirement scheme of a management as illegal, I had an occasion to consider the maintainability of writ petition by referring to various judgements of this Court as well as the Hon'ble Apex court in W.P.No.34269 and 34270 of 2006 dated 29.11.2006 in United Labour Federation, Rep.by its General Secretary Vs. The Management of Rickitt Benckiset (India) Ltd. In a recent judgement, the Hon'ble Supreme Court in A.P.Foods Vs. S.Samuel and others reported in 2006(5) SCC 469 has held when an alternative exhaustive remedy is available under Labour Law, writ petition should not be entertained under Article 226 of the Constitution of India unless an exceptional circumstance is made out as follows:

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"6. In a catena of decisions it has been held that a Writ petition under Article 226 of the Constitution of India shall not be entertained when the statutory remedy is available under the Act, unless exceptional circumstances are made out."

45. It is the case of the petitioner union that the settlement entered under 12(3) settlement is an unfair labour practice and the remedy available is under the Industrial Disputes Act, and not by invoking the jurisdiction of this Court under Article 226 of the Constitution of India. The Hon'ble Supreme Court in yet another judgement in State of Uttranchal Vs. Jackpal Singh Thiyage reported in 2005(8) SCC 49 has held that if there is any question raised as to whether the settlement was bona fide or obtained by fraud or misrepresentation or concealment of fact the same can be resolve only by way of Industrial Disputes.

46. In view of the said facts that there are controversial factual situations, I am of the considered view that the writ petition is not maintainable, however it is open to the petitioner union to work out their remedy available under the Industrial Disputes Act, to decide about the validity or otherwise of the impugned settlement entered under Section 12 (3) of the Act, dated 17.05.2006. The writ petition stands dismissed. No Costs. Consequently, the connected W.P.M.P. is closed.

2.2.2007

This Petition having been posted on this day under the caption for being mentioned in the presence of Mr.K.M. Ramesh, Advocate for the Petitioner and mr.A.L. Somayaji, Senior counsel for the Fourth respondent the Court made the following order:-

By an order, dated 02.02.2007, while dismissing the writ petition, I have stated in paragraph 46 as follows :

" 46. In view of the said facts that there are controversial factual situations, I am of the considered view that the writ petition is not maintainable, however, it is open to the petitioner union to work out their remedy available under the Industrial Dispute Act, to decide about the validity or otherwise of the impugned settlement entered under Section 12(3) of the Act, dated 17.05.2006. The writ petition stands dismissed. No costs. Consequently, the connected W.P.M.P. Is closed."

2. This matter is posted today for Being Mentioned.

3. Mr.Ramesh, Learned counsel for the petitioner would submit that after the order was passed by this court, the petitioner – union, has in

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fact raised a dispute between the Conciliation Officer and the same is pending and therefore, he would submit that a direction may be given to the Authorities to act in accordance with law.

4. I have heard Mr.Ramesh, learned counsel for the petitioner and Mr.A.L.Somayaji, learned Senior Counsel for the fourth respondent.

5. In view of the above said submission that the petitioner has subsequently raised a dispute between the Conciliation Officer, it is made clear that it is for the Conciliation Authority to act in accordance with law and to dispose any such applications that may be filed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

nbj

To

1. The Secretary to Government
   Labour and Employment Department,
   Fort St.George, Chennai -9.

2. The Commissioner of Labour,
   Labour Welfare Building,
   DMS Compound, Chennai - 6.

3. The Joint Commissioner of Labour,
   Labour Welfare Building,
   DMS Compound, Chennai - 6

1 cc To Mr.K.M.Ramesh, Advocate, SR.16172
1 cc To Mr.N.Balasubramaniam, Advocate, SR.16187

W.P.No.34938 of 2006

RS(CO)
RVL 08.02.2007
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